9 FAM 42.21
NOTES

(CT:VISA-878; 04-25-2007)
(Office of Origin: CA/VO/L/R)

9 FAM 42.21 N1 "IMMEDIATE RELATIVE" DEFINED

(TL:VISA-329; 10-26-2001)

The Immigration and Nationality Act defines "immediate relative" to include the following:

(1) Spouse of a U.S. citizen (see 9 FAM 40.1 N1);

(2) Certain spouses (and the accompanying or following-to-join children) of deceased U.S. citizens (see 9 FAM 42.21 N1.2);

(3) Child of a U.S. citizen (see 9 FAM 40.1 N2);

(4) Adopted child of a U.S. citizen (see 9 FAM 42.21 N12);

(5) Orphan to be adopted by a U.S. citizen residing in the United States (see 9 FAM 42.21 N13);

(6) Parent of an adult U.S. citizen (see 9 FAM 40.1 N5); and

(7) Child under 16 adopted or to be adopted under the terms of the Hague Convention (see 9 FAM 42.21 N14 below).

9 FAM 42.21 N1.1 "Spouse," "Child," and "Parent" Defined

(TL:VISA-170; 10-01-1997)

See 9 FAM 40.1 Notes.

9 FAM 42.21 N1.2 "Spouse and Child of Deceased U.S. Citizen" Defined

(TL:VISA-372; 03-18-2002)

a. INA 201(b)(2)(A)(i) as amended by sec. 101(a) of Public Law 101-649 changed the definition of "immediate relatives" to include the spouse of a deceased U.S. citizen, provided the spouse:

(1) Was married to the U.S. citizen for at least two years prior to the U.S. citizen's death;

(2) Was not legally separated at the time of the spouse's death;

(3) Has not remarried; and

(4) Files a petition under INA 204(a)(1)(A)(ii) within two years after the death of the spouse.

b. Section 219(b)(1) of Public Law 103-416 further amended the definition to include the child(ren) of the spouse of the deceased U.S. citizen. Such children, however, may not petition in their own behalf, but are derivatives of the principal beneficiary. Consequently, they can obtain status only as derivatives by accompanying or following to join the principal beneficiary. Derivative status does not extend to unmarried sons or daughters of widows or widowers.

c. Section 423(a)(1) of Public Law 107-56 (the "USA Patriot Act") further extended the self-petitioning right to the spouses (widows/widowers) of U.S. citizen victims of one of the terrorist acts of September 11, 2001, with no requirement that the marriage has existed a specific minimum period. The other requirements placed on spouses of deceased U.S. citizens do apply, however. (See 9 FAM 42.21 N1.2 a(2), (3), and (4) above.) The children of such spouses may be included in the petition of the parent.

d. Section 423(a)(2) of the USA Patriot Act provides that the child of a deceased U.S. citizen victim may retain immediate relative "child" status, regardless of changes of age or marital status, if the child files a petition for such status within two years of the parent's death.

9 FAM 42.21 N1.2-1 Applying for Status Under Section 423 (the USA Patriot Act)

(CT:VISA-728; 04-07-2005)

Under section 423 of the USA Patriot Act, the surviving spouse or child must file a Form I-130, Petition For Alien Relative, with either the U.S. Citizenship and Immigration Services (USCIS) office that has jurisdiction over the place of residence, or with the consular post abroad in which district the beneficiaries reside. Applicants must provide evidence that the U.S. citizen spouse or parent was killed in the attacks of September 11 (see 9 FAM 40.1 N12), as well as relationship.

9 FAM 42.21 N1.2-2 Consular Processing

(CT:VISA-878; 04-25-2007)

Applicants will be processed as Immediate Relative (IR1/IR2), even if the

IR2 is 21 years or older. The usual national crime information center (NCIC), security checks, medical exam, as well as birth, death, divorce and/or marriage certificates are required. No Form I-864, Affidavit of Support under Section 213A of the Act, may be required. Applicants are exempt from the public charge inadmissibility of INA 212(a)(4). You should issue an IR1 to a spouse who qualifies under section 423 of the USA Patriot Act and issue an IR2 to the alien child, son or daughter who qualifies under this section regardless of age or marital status. You should annotate the visa:

"Beneficiary of USA Patriot Act sec. 423"

9 FAM 42.21 N1.3 "Adopted Child" Defined

(TL:VISA-170; 10-01-1997)

See 9 FAM 42.21 N12.1.

9 FAM 42.21 N1.4 "Orphan" Defined

(TL:VISA-170; 10-01-1997)

See 9 FAM 42.21 N13.1.

9 FAM 42.21 N2 ENTITLEMENT TO STATUS

9 FAM 42.21 N2.1 Immediate Relative (IR) Petition Beneficiaries

(CT:VISA-878; 04-25-2007)

An alien is entitled to status as an Immediate Relative (IR) if you have received a properly approved petition from the Department of Homeland Security (DHS) and you are satisfied that the claimed relationship exists.

9 FAM 42.21 N2.2 Derivative Immediate Relative (IR) Status for Spouses or Children

9FAM 42.21 N2.2-1 Generally No Derivative Status

(TL:VISA-179; 08-21-1998)

The INA does not generally (see exception under 9 FAM 42.21 N2.2-3) accord derivative status for family members of immediate relatives as it does for preference applicants. INA 203(d) does not apply to the classes described in INA 201(b). A U.S. citizen must file separate immediate

relative petitions for the spouse, each child, and each parent.

9 FAM 42.21 N2.2-2 Spouse/Child of Immediate Relative (IR5) Not Entitled to Derivative Status

(CT:VISA-878; 04-25-2007)

"Parents" of U.S. citizens are accorded IR5 status only upon U.S. Citizenship and Immigration Services approval of a Form I-130, Petition for Alien Relative, establishing that the appropriate child-parent relationship exists. In certain circumstances, a U.S. citizen may be entitled to petition for only one parent, such as when the beneficiary's spouse does not meet the definition of "parent" as set forth at INA 101(b)(2). For example, an alien who becomes a stepparent of an 18 year old is not considered to be the "parent" of that child for immigration purposes (see INA 101(b)(1)(B)). Consequently, should that stepchild become a U.S. citizen, USCIS would be unable to approve a Form I-130, Petition for Alien Relative (for IR5 status) for that stepparent. Further, spouses and children of IR5s cannot benefit from derivative status through the principal alien. Spouses, who cannot qualify in their own right for IR-5 status, and any children of an IR5, would require the filing of a separate Form I-130 petition (family-based second) upon the principal's admission to the United States as a permanent resident.

9 FAM 42.21 N2.2-3 Exception

(TL:VISA-170; 10-01-1997)

Sec. 219(b)(1) of Public Law 103-416 makes an exception to the general rule by providing derivative status for the accompanying or following-to-join children of spouses of deceased U.S. citizens.

9 FAM 42.21 N3 PETITION PROCEDURES FOR U.S. CITIZENS ABROAD

(TL:VISA-23; 04-04-1989)

See 9 FAM 42.41 N4.

9 FAM 42.21 N4 REFUSAL TO FILE IMMEDIATE RELATIVE (IR) PETITION

(CT:VISA-878; 04-25-2007)

In general, the spouse, child, or parent of a U.S. citizen who is entitled to classification as an immediate relative should be processed as an immediate

relative. However, if you are fully satisfied that the U.S. citizen relative has refused to file a petition on behalf of the spouse, child, or parent, for reasons other than financial consideration or inconvenience, you may consider the applicant for any other type of immigrant visa (IV) for which he or she is qualified.

9 FAM 42.21 N4.1 Alien Classifiable as Immediate Relative (IR) or Preference Immigrant

(CT:VISA-878; 04-25-2007)

If an alien is classifiable both as an IR and a preference immigrant, and the alien's spouse refuses to file an immediate relative petition to avoid conditional status, you may process the alien case as that of a preference immigrant. (See 9 FAM 42.21 N7.)

9 FAM 42.21 N4.2 Spouse/Child of Abusive U.S. Citizen or Lawful Permanent Resident (LPR)

(CT:VISA-878; 04-25-2007)

Abusers generally refuse to file relative petitions because they find it easier to control relatives who do not have lawful immigration status. Section 40701 of Public Law 103-322 contains provisions that allow the qualified spouse or child of an abusive U.S. citizen or LPR to self-petition for immigrant classification.

9 FAM 42.21 N5 ALIEN CLASSIFIABLE AS IMMEDIATE RELATIVE (IR) AND SPECIAL IMMIGRANT

(CT:VISA-878; 04-25-2007)

An alien classifiable as an immediate relative who is also classifiable as a special immigrant under INA 101(a)(27)(A) or (B) may establish entitlement to classification under either category, depending upon which of the two may be more easily established. Since special immigrants under INA 101(a)(27)(A) and (B) are not subject to numerical limitations, this procedure is in accord with the original intent of Congress in enacting INA 201(b), namely, to prevent the use of immigrant visa (IV) numbers by aliens who are able to immigrate in a visa category not subject to numerical limitations.

9 FAM 42.21 N6 PETITIONER'S NATURALIZATION SUBSEQUENT TO APPROVAL OF FAMILY SECOND PREFERENCE PETITION

(CT:VISA-878; 04-25-2007)

a. In the event of the petitioner's naturalization after approval of a family second petition but before visa issuance, Department of Homeland Security (DHS) regulations (8 CFR 204.2(h)(3)), the petition is automatically converted as of the date of the petitioner's naturalization to accord immediate relative status under INA 201(b) for the spouse (automatically converted from F21 to IR1) or child (automatically converted from F22 to IR2), or first preference status under INA 203(a)(1) for an unmarried son or daughter (automatically converted from F24 to F11).

b. Proof of naturalization must be submitted to you when considering the visa application and you must include it in the issued visa. The petition need not be returned to USCIS for re-approval. If notification of the naturalization has been received from USCIS in the form of a letter, you must attach it to the petition.

c. Automatic conversion of a petition is not authorized for an alien who is a derivative beneficiary (F23 or FX3) of a petition filed by an legal permanent resident (LPR) who subsequently becomes a U.S. citizen. The principal beneficiary must file (and obtain USCIS approval of) a Form I-130, Petition for Alien Relative (family second preference) upon the principal's admission to the United States before the derivative alien may be granted a visa.

9 FAM 42.21 N7 CONDITIONAL STATUS FOR CERTAIN IMMEDIATE RELATIVES (IRs)

(CT:VISA-878; 04-25-2007)

a. The Immigration Marriage Fraud Amendments Act of 1986 (Public Law 99-639) amended the Immigration and Nationality Act by adding section 216 which provides conditional permanent resident status for certain immediate relative categories at the time of admission.

b. You classify the spouse of a U.S. citizen or the child of a U.S. citizen as a conditional immigrant at the time of visa issuance if the basis for immigration is a marriage that was entered into less than two years prior to the date of visa issuance.

9 FAM 42.21 N8 MARRIAGE BETWEEN RELATIVES

(CT:VISA-878; 04-25-2007)

Under INA 204, the USCIS has the responsibility for determining whether an alien is entitled to immediate relative or preference status by reason of the alien's relationship to a U.S. citizen or permanent resident alien. If USCIS approves a petition with the knowledge that the parties concerned are related to each other such as uncle and niece or as first cousins, you should accept such determination and not attempt to reach an independent conclusion. (See 9 FAM 42.43 PN1.) For information on petitionable marriage relationships, (see 9 FAM 40.1N).

9 FAM 42.21 N9 STEPPARENT/STEPCHILD RELATIONSHIP

(TL:VISA-170; 10-01-1997)

A stepparent or stepchild may confer or derive immigrant status even when parties to a marriage creating the stepparent/stepchild relationship have legally separated provided the family relationship has continued to exist between the stepparent and stepchild. Note, however, that the stepparent-stepchild relationship must have been established prior to the stepchild's 18th birthday INA 101(b)(1)(B)).

9 FAM 42.21 N10 EFFECT OF PRIVATE LEGISLATION ACCORDING "CHILD" STATUS

(CT:VISA-878; 04-25-2007)

A petition according preference status shall be regarded as approved to accord immediate relative status under INA 201(b)(2) if the beneficiary has been declared a "child" of the petitioner by private legislation. You should regard such a petition as approved for that purpose as of the date of the enactment of the private legislation or of the effective date stated in the language of the private law.

9 FAM 42.21 N11 PROCESSING VISAS IN ADOPTION CASES

(CT:VISA-878; 04-25-2007)

a. The Bureau of Consular Affairs (CA) considers adoption cases to be of the

highest priority. Consular sections should provide helpful, courteous and expeditious assistance to U.S. citizens and maintain sound visa-issuance policies.

b. Consular sections should be responsive to inquiries, schedule interviews quickly, and make prompt decisions. An adoption involves both the adopting parents and the child. Even if the final resolution is that the child is ineligible for immigration, you best serve all parties by making this determination as quickly as possible. Any required field investigations or record checks in an adoption case must be given priority over other immigrant and nonimmigrant visa cases, and must be completed expeditiously so that the case may be resolved in a timely manner. If you determine that a petition is not "clearly approvable" or that a USCIS-approved petition may have been approved in error, you should forward it to the appropriate USCIS office without delay together with a cover memo detailing the reasons for the return.

c. Correspondence on orphan and adoption issues should be shared with other concerned offices outside the Visa Office (CA/VO) in particular CA/OCS/CI and, when appropriate, CA/FPP. Posts should use CVIS, CASC, KOCI and KFRD tags respectively, on adoption-related correspondence, to ensure timely distribution of cables to these offices. Posts should keep the Department and USCIS informed of general adoption issues, especially changes in local documentation or legal and/or procedural requirements.

d. Properly documenting adopted children is important. Depending on the purpose of the travel and circumstances of the case, one of the following options would be most appropriate.

(1) Immigrant visa (IV) classifications:

(a) INA 101(b)(1)(E) allows a U.S. citizen to petition for an unmarried, under age-21 "child" who was adopted while under the age of 16 and has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years (IR2, see 9 FAM 42.21 N12);

(b) INA 101(b)(1)(F) permits a U.S. citizen to petition for an under age-16 "orphan" if the parents have been found suitable to adopt and meet age and citizenship requirements, if the child has no parents or a sole or surviving parent who is unable to care for them and has irrevocably released the child for emigration and adoption, and if the child is unmarried and under age 21 at the time of immigration (IR3 or IR4, see 9 FAM 42.21 N13); or

(c) Once the U.S. ratifies the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption,

adopted children in Hague countries will generally need to demonstrate that they meet the qualifications established in INA 101(b)(1)(G) for Hague children. However, until the U.S. ratifies the Hague Convention, adopted children in Hague signatory countries must demonstrate that they fit into either the INA 101(b)(1)(E) "child" or INA 101(b)(1)(F) "orphan" classification in order to obtain an immigrant visa (IV) based on the adoptive relationship. (See 9 FAM 42.21 N14.)

(2) Nonimmigrant visas (NIVs) classifications:

(a) Children adopted by American citizens who do not intend to live in the United States may visit the United States on NIVs (see 9 FAM 41.31 N14.3) and, in some cases, qualify for a B-2 visa to participate in expeditious naturalization procedures (see 9 FAM 42.21 N13.2-9(g) and 9 FAM 41.31 N14.5).

(b) Adopted children who meet INA 101(b)(1)(E) criteria may also qualify for nonimmigrant status as the derivative child of a principle NIV applicant. For example, the principle applicant for a nonimmigrant F visa may bring their adopted child to the United States under the nonimmigrant F-2 classification as long as the otherwise-qualified child was adopted before age 16 and has already spent two years in the applicant's residence and custody.

NOTE: Unless INA 101(b)(1)(E) requirements are met, the adopted child does not qualify as a derivative child; INA 101(b)(1)(F) criteria cannot be applied to nonimmigrant derivative cases.)

(c) You should carefully review NIV applications for children who have been adopted or will be adopted by U.S. citizens and who intend to live in the United States with their adoptive parents. Such children may wish to visit the United States for a short period of time and return to their country of residence for IV processing, thereby satisfying 214(b) provisions and qualifying for a B-2 visa. However, for cases where you are not satisfied that the child will return to their place of residence, a NIV should not be issued to the child. Such an issuance would violate the law, circumvent scrutiny intended to protect the orphan and adoptive parents, and place the child in an untenable immigration predicament since DHS regulations prohibit the approval of an immigrant petition for a child who is in the United States either illegally or in nonimmigrant status.

(3) In rare cases where there are significant humanitarian concerns

(i.e., natural disaster, civil disorder/war, etc.), adoptive parents may seek humanitarian parole for an adoptive child who will be legally able to adjust status in the U.S. based on an immigrant classification (see 9 FAM 42.1 N4).

(4) You should also recognize that they may also very occasionally encounter cases of adopted children who are not eligible for any immigrant or NIV classification, usually due to their advanced age or the circumstances of the adoption.

e. Effect of foreign laws and customs on immigrant petitions for adopted children:

(1) Some foreign states have no statutory provisions governing adoption, and in some of these states the concept of adoption is not legally recognized. Legal adoption for the purpose of immigration does not exist in foreign states that apply Islamic law in matters involving family status.

(2) Accordingly, Department of Homeland Security (DHS) and the Department hold that relationships through claimed adoptions in such countries cannot be established for visa petition purposes. DHS and the Department also hold that an adoptive relationship claimed to have been effected in a country which has no statutory provisions governing adoption cannot be recognized for visa classification purposes unless the relationship is sanctioned by local custom or religious practice, judicially recognized in the country, and the relationship embraces all the usual attributes of adoption, including the same irrevocable rights accorded a natural born child.

9 FAM 42.21 N12 ADOPTED CHILD UNDER 101(B)(1)(E) – IMMEDIATE RELATIVE (IR2)

9 FAM 42.21 N12.1 "Child" Defined

(CT:VISA-878; 04-25-2007)

a. Under INA 101(b)(1)(E), an alien is defined as a child and is classified IR2, if the child:

(1) Was adopted while under the age of 16 (or is the natural sibling of such child who was adopted by the same parents while under the age of 18); and

(2) Has been in the legal custody of, and has resided with, the adopting parent(s) for two years.

b. A child who satisfies all the requirements of INA 101(b)(1)(E) with

respect to an U.S. citizen adoptive parent/petitioner may be the beneficiary of an Form I-130, Petition for Alien Relative, and classifiable as an IR2. A child who satisfies the requirements of this subsection with respect to an alien may seek any immigration benefit appropriate to a legitimate child of that alien.

9 FAM 42.21 N12.2 Adoption Requirement

(CT:VISA-878; 04-25-2007)

The adoption must have been both final and legal in the jurisdiction in which it occurred. A "simple" or "limited" adoption (an adoption which does not create a permanent parent-child relationship or give the adopted child the same rights as a child legitimately born to the adoptive parent, i.e., inheritance) does not constitute an adoption for immigration purposes. Similarly, some foreign states have no statutory provisions governing adoption or legal mechanism for adoptions to exist (see 9 FAM 42.21 N11 e for additional details).

9 FAM 42.21 N12.3 Legal Custody Requirement

(TL:VISA-372; 03-18-2002)

"Legal custody" means the assumption of responsibility for a minor by an adult under the laws of the state and under the order or approval of a court of law or other appropriate government entity. This provision requires that a legal process involving the courts or other recognized government entity take place. If the adopting parent was granted legal custody by the court or recognized governmental entity prior to the adoption, that period may be counted toward fulfillment of the two-year legal custody requirement. However, if custody was not granted prior to the adoption, the adoption decree shall be deemed to mark the commencement of legal custody. An informal custodial or guardianship document, such as a sworn affidavit signed before a notary public, is insufficient for this purpose.

9 FAM 42.21 N12.4 Residence Requirement

(TL:VISA-372; 03-18-2002)

Evidence must also be submitted to show that the adopted child and/or beneficiary resided with the adoptive parent and/or petitioner for at least two years. Generally, such documentation must establish that the petitioner and the beneficiary resided together in a parent-child relationship. The evidence must clearly indicate the physical living arrangements of the adopted child, the adoptive parent(s), and the natural parent(s) for the period of time during which the adoptive parent claims to have met the residence requirement. When the adopted child continued to reside in the

same household as the natural parent(s) during the period in which the adoptive parent/petitioner seeks to establish his or her compliance with this requirement, the petitioner has the burden of establishing that he or she exercised primary parental control during that period of residence. Evidence of parental control may include, but is not limited to, evidence that the adoptive parent provided financial support and day-to-day supervision of the child, and owned or maintained the property where the child resided.

9 FAM 42.21 N12.5 Applying Two-Year Custody and Residence Requirement

(TL:VISA-372; 03-18-2002)

The two years the child was in the legal custody of the adoptive parent do not have to be the same two years the child resided with the adoptive parent. The requisite two-year custody and two-year residence may take place either prior to or after the adoption, but both must be completed before the child will be eligible for benefits under INA 101(b)(1)(E). Both legal custody and residence are counted in aggregate time. A break in legal custody or residence, therefore, will not affect the time already fulfilled.

9 FAM 42.21 N12.6 Processing Immigrant Visas (IV) for Adopted Children

(CT:VISA-878; 04-25-2007)

An adopted child who has satisfied all of the requirements of INA 101(b)(1)(E) while still unmarried and under the age of 21 qualifies as a child of the adoptive parent. An immigrant visa (IV) for such a child is processed in much the same way as an IV would be for a legitimate biological child of the same parent. In support of the Form I-130, Petition for Alien Relative, the adoptive parent and/or petitioner must provide:

(1) A certified copy of the adoption decree;

(2) The legal custody decree; if custody occurred before the adoption;

(3) A statement showing dates and places where child resided with the parents; and

(4) If the child was adopted while aged 16 or 17 years evidence that the child was adopted together with, or subsequent to the adoption of, a natural sibling under age 16 by the same adoptive parent(s).

9 FAM 42.21 N12.7 Adopted Children Do Not Have To Be Orphans

(CT:VISA-878; 04-25-2007)

Adopted children may be properly documented as children, orphans, or, eventually, as Hague children, and in some cases should receive nonimmigrant visas (see 9 FAM 42.21 N11). A child immigrating to the United States who satisfies the requirements of INA 101(b)(1)(E) does not also have to qualify as an orphan under INA 101(b)(1)(F), nor does he or she have to have been an orphan prior to the adoption. If a child qualifies under INA 101(b)(1)(E), adopting parents should not be encouraged to pursue orphan processing for the child.

9 FAM 42.21 N12.8 Adoptive Stepchildren

(CT:VISA-878; 04-25-2007)

A child can be considered the stepchild of his or her adoptive parent's spouse only if he or she qualified as the child of the adoptive parent under INA 101(b)(1) at some point when both a legal marriage existed between the adoptive parent and spouse and the child was still under age 18. For example, if an alien woman adopts a small child, fulfills the two-year custody and joint residence requirements per INA 101(b)(1)(E), and then marries an U.S. citizen while her adoptive child is still under age 18, the child qualifies as the stepchild of the U.S. citizen. If she marries the U.S. citizen before fulfilling the two-year custody and joint residence requirements, then the child does not become a stepchild of the American citizen for immigration purposes until those requirements are fulfilled, provided she is still legally married to the U.S. citizen and the child is still under age 18.

9 FAM 42.21 N12.9 Relating 101(b)(1)(E) to Adult or Married Sons or Daughters

(TL:VISA-372; 03-18-2002)

An alien may subsequently be considered the son or daughter of an adoptive parent provided he or she had satisfied the requirements of INA 101(b)(1)(E) with respect to that adoptive parent while still unmarried and under the age of 21. An alien who never satisfied the requirements of that subsection with respect to an adoptive parent, however, may not petition for or be the beneficiary of a petition filed by a previous parent, regardless of whether or not any benefit has been sought based on the adoptive relationship.

9 FAM 42.21 N12.10 Child Citizenship Act

(CT:VISA-878; 04-25-2007)

Many adoptive parents have questions related to the Child Citizenship Act and its impact on their child. They can be referred to the USCIS Web site or

State Web site for additional information and important details on the legislation's impact on adopted children. In general, IR2 adopted children under the age of 18 at the time of admission to the U.S. are granted automatic citizenship upon admission. Adoptive parents must file an Form N-600 Application for Certificate of Citizenship request with USCIS or request a U.S. passport to obtain proof of citizenship.

9 FAM 42.21 N13 ORPHANS ADOPTED UNDER INA 101(B)(1)(F) – IMMEDIATE RELATIVE (IR3 AND IR4) CLASSIFICATIONS

9 FAM 42.21 N13.1 "Orphan" Processing

(CT:VISA-878; 04-25-2007)

a. Introduction

(1) Many parents who adopt a child overseas or are granted legal custody of a child for purposes of adoption will petition for the child to enter the United States based on immigrant classification under INA 101(b)(1)(F) as an "orphan." More detailed information on the orphan classification is provided in 9 FAM 42.21 N13.2.

(2) All adoption cases must be treated with considerable sensitivity and processed as quickly as is reasonably possible to avoid hardship for the child or adopting parents.

b. Providing proper travel documentation to adopted children is important, and particularly given the fairly complicated nature of orphan processing, parents and consular officers should carefully consider the nature of the intended travel prior to beginning orphan processing. Depending on the purpose of the travel and circumstances of the case, adopted children could receive immigrant visas based on the orphan, child (IR2, per INA 101(b)(1)(E)) (see 9 FAM 42.21 N12), or, eventually, Hague child (per INA 101(b)(1)(G)) (see 9 FAM 42.21 N14) classifications based on intent to immigrate to the United States. Alternatively, some adopted children qualify for nonimmigrant visas as family members of other nonimmigrant visa (NIV) holders (see 9 FAM 42.21 N11), or as short-term tourists or participants in a naturalization hearing (see 9 FAM 42.21 N13.2-9 and 9 FAM 41.31 N14.3 and 9 FAM 41.31 N14.5). You should not issue a NIV to an adopted child who is immigrating to the United States as a result of this trip to reside with his or her adoptive parents. (See 9 FAM 42.21 N11 for additional details on appropriate options for documenting adopted children.)

c. Processing an orphan case requires the following steps:

(1) Prospective adopting parents establish their suitability and ability to provide a proper home environment for the adopted child, usually through an approved Form I-600-A, Application for Advance Processing of Orphan Petition (see 9 FAM 42.21 N13.3);

(2) Prospective adopting parents establish that a particular child may be classified as an orphan, as demonstrated by an approved Form I-600 Petition to Classify Orphan as an Immediate Relative and confirmed through the Form I-604, Request for and Report on Overseas Orphan Investigation (see 9 FAM 42.21 N13.4 and 9 FAM 42.21 N13.5); and

(3) A visa application is filed on behalf of the child, providing all necessary documentation for production of the visa and demonstrating that no ineligibilities apply; the application is adjudicated by you, and, the visa, if issued, serves as the basis for their request for admission into the United States and acquisition of citizenship (see 9 FAM 42.21 N13.6)

Because processing of orphan cases varies somewhat from standard IV processing, 9 FAM 42.21 N13 examines each of the stages for processing these cases. Questions related to processing of such cases should be directed to CA/VO/F/P; classification questions should be directed to CA/VO/L/A (with a copy to CA/VO/F/P); and reporting on countries' adoption practices should be directed to CA/OCS/CI, with a copy to CA/VO/F/P.

9 FAM 42.21 N13.2 "Orphan" Classification

9 FAM 42.21 N13.2-1 Key Elements of Classification

(CT:VISA-878; 04-25-2007)

a. There are three key elements to the orphan classification:

(1) The child is under the age of 16 at the time a petition is filed on his or her behalf (or under the age of 18 if adopted or to be adopted together with a natural sibling under the age of 16) and is unmarried and under the age of 21 at the time of petition and visa adjudication (see 9 FAM 42.21 N13.2-2);

(2) The child has been or will be adopted by a married U.S. citizen and spouse, or by an unmarried U.S. citizen at least 25 years of age (see 9 FAM 42.21 N13.2-2 and 9 FAM 42.21 N13.2-3); and

(3) The child is an orphan because either:

(a) The child has no parents because of the death or disappearance, abandonment or desertion by, or separation from or loss of both parents (see 9 FAM 42.21 N13.2-4 and 9

FAM 42.21 N13.2-5); or

(b) The child's sole of surviving parent is incapable of providing proper case and has, in writing, irrevocably released the child for emigration and adoption (see 9 FAM 42.21 N13.2-4 and 9 FAM 42.21 N13.2-6).

b. In addition, you must be satisfied that the petitioner (and spouse, if applicable) intends to enter into a bona fide parent-child relationship with that orphan (see 9 FAM 42.21 N13.2-7), and that there is no credible evidence of child buying, fraud or misrepresentation associated with the case (see 9 FAM 42.21 N13.2-8).

c. Children who are determined to be orphans may be classified as an IR3 or IR4. Proper classification is very important given passage of the Child Citizenship Act of 2000, and is addressed in 9 FAM 42.21 N13.2-9.

9 FAM 42.21 N13.2-2 Age and Citizenship Requirements

(CT:VISA-878; 04-25-2007)

a. To be considered an orphan, the adopted child must have an Form I-600, Petition to Classify Orphan as an Immediate Relative filed on his or her behalf before the child's 16th birthday, or, in the case of natural siblings, before the child's 18th birthday.

(1) Form I-600 must be filed, but does not have to be approved, before the beneficiary's 16th (or 18th for natural siblings) birthday.

(2) Because an "orphan" must meet the general definition of a child in INA 101(b)(1), the beneficiary must be unmarried and under the age of 21 at all stages of petition adjudication, visa processing and travel to the United States.

(3) Public Law 106-139 was enacted to prevent the separation of natural siblings through adoption where the circumstances of the older child are essentially those of the younger child except that the older child is age 16 or 17. Therefore, 16- or 17-year olds traveling with or after younger siblings travel may also benefit from an Form I-600 as long as the petition is filed prior to their 18th birthday.

(4) See 9 FAM 42.21 N13.3 on other case-specific age-related requirements that may have to be met at the time of petition filing based on USCIS' approval of individual parents' suitability to adopt overseas.

b. Only a U.S. citizen may file an Form I-600 for an orphan.

(1) If the petitioner is legally married, the spouse does not have to be a U.S. citizen, but if not a U.S. citizen, must be in lawful immigrant status. There are no age requirements for a married petitioner and

spouse. Regardless of any legal separation or separation agreement, the spouse must sign the Form I-600.

(2) If the petitioner is unmarried, he or she must be at least 24 years old at the time he or she submits a Form I-600-A, Application for Advance Processing of Orphan Petition (see 9 FAM 42.21 N13.3), and at least 25 years old at the time he or she files the Form I-600.

9 FAM 42.21 N13.2-3 Adoption or Intent to Adopt

(CT:VISA-878; 04-25-2007)

a. The petitioner(s) must have adopted or intend to adopt the orphan, as demonstrated by either (1) or (2) below:

(1) Evidence of a full and final adoption under the laws of the foreign sending country. For adoptions abroad where the adoptive parent(s) did not personally see the orphan prior to or during the adoption proceeding abroad or, if petitioners are married, where the adoption is not done in the name of both parties, the petitioner(s) must also have evidence that the state of the orphan's proposed residence allows re-adoption or provides for judicial recognition of the adoption abroad.

(a) Evidence of a full and final adoption would usually be in the form of an adoption decree, giving the adopted child the same rights and privileges which are accorded to a natural legitimate child (such as inheritance rights, etc.) Simple, conditional or limited adoptions, such as those conducted under Islamic Family Law in some countries, are more accurately described as guardianship and are not considered valid adoptions for U.S. immigration purposes (see also 9 FAM 42.21 N11 e). If married, both petitioners must be party to the adoption.

(b) A foreign adoption, even if documented with a valid local adoption decree, is not valid for purposes of demonstrating a full and final adoption unless the adoptive parent(s) actually saw the child at some point prior to or during the foreign adoption procedures. If the petitioner is married, the spouse must also have seen the child prior to or during the adoption proceedings. If neither or only one of the two adoptive parents actually saw the child, the foreign adoption cannot be considered full and final, although it should adequately prove legal custody of the child for purposes of emigration and adoption (see 9 FAM 42.21 N13.2-3a(2)). In such a case, if the petitioners can demonstrate that their state of residence allows re-adoption, provides for judicial recognition of the

adoption abroad, or that pre-adoption requirements have been met, the petitioner should be considered to have adequately shown evidence of the intent to adopt.

NOTE: For proxy adoptions where neither adopting parent has seen the child, the Form I-600 will need to be filed with a USCIS office in the United States since the petitioner will not be physically present overseas. (See 9 FAM 42.21 N13.4.)

(2) An irrevocable release of the orphan for emigration and adoption from the person, organization, or competent authority which had the immediately previous legal custody or control over the orphan. The petitioner (and spouse, if applicable) must intend to, and be legally able, to adopt the child in the United States; petitioners must present evidence showing that any state pre-adoption requirements noted in the approval of their suitability to adopt (Form I-600-A approval notice) have been met (unless they cannot be complied with prior to the orphan's arrival in the United States).

(a) Evidence of custody of the child for purposes of emigration and adoption will vary greatly depending on local laws and regulations governing child custody. Generally, this evidence will consist of documentation from a governmental agency, a court of competent jurisdiction, an adoption agency or an orphanage legally authorized to release the child for emigration and adoption according to local law or regulation. The evidence does not have to include specific reference to the custody being granted for purposes of emigration and adoption, but should not prohibit the child's ability to leave the country or otherwise limit the custody arrangements of the parents (i.e., guardianship for academic purposes, temporary custody, etc.). Generally speaking, grants of guardianship under Islamic sharia provisions do not meet custody requirements.

(b) Petitioners who have custody of the child for purposes of emigration and adoption must also demonstrate that they have met or will meet the pre-adoption requirements of the state of the child's proposed residence. Form I-600-A approval notice should note any pre-state requirements that must be met. Adoptive parents must provide you with evidence that all such identified pre-adoption requirements (except those that cannot be complied with prior to the child's arrival in the United States) have been met. Officers should be as flexible as possible in evaluating such evidence, opting for the minimum level of proof acceptable in each case. If questions arise regarding pre-adoption requirements, you can

consult with CA/OCS/CI and CA/VO/F/P.

(c) You need to be well versed in the host country's adoption, custody and guardianship laws and procedures, and should rely on competent local authorities to make responsible decisions about the facts surrounding child custody and final adoptions, not second-guessing whether such authorities are correctly implementing their own laws or regulations. At the same time, you must keep in mind that terms used by such local authorities (such as "abandonment") may not always be equivalent to definitions for such terms in U.S. immigration law. In all cases, the requirements of U.S. immigration law must be met. If you have evidence of a trend involving inappropriate application of local laws or local officials' decisions contributing to child-buying, fraud or misrepresentation in adoption cases, details of post's findings should be reported to CA/VO/F/P and CA/OCS/CI.

9 FAM 42.21 N13.2-4 Status of Natural Parents - Introduction

(CT:VISA-878; 04-25-2007)

a. A child may be considered an orphan if he or she has no parents because of the death or disappearance, abandonment or desertion by, or separation from or loss of both parents (see 9 FAM 42.21 N13.2-5). A child may also be considered an orphan if they have a sole or surviving parent unable to care for the child who irrevocably releases the child for emigration or adoption (see 9 FAM 42.21 N13.2-6).

b. These two sets of criteria are distinct and separate, and only one set of requirements must be met for the child to be considered an orphan. For example, a child whose sole parent is unable to provide proper care does not have to have been abandoned by both parents in order to qualify as an orphan. Similarly, if one of the child's parents has died and local courts have legally separated the child from the remaining parent, there is no need under U.S. immigration law for the separated parent to irrevocably release the child for emigration and adoption.

c. Department of Homeland Security (DHS) regulations establish very specific meanings for terms describing an orphan's natural parents, and specific documentation is required in each case, as outlined in the sections 9 FAM 42.21 N13.2-5 and 9 FAM 42.21 N13.2-6. Questions related to whether the circumstances of and evidence submitted for a particular case are sufficient for orphan status should be directed to CA/VO/F/P and CA/VO/L/A. If primary evidence is not available but posts feels the case may still merit orphan classification, you should consult

with CA/VO/F/P and CA/VO/L/A.

9 FAM 42.21 N13.2-5 Orphan With No Parents

(CT:VISA-878; 04-25-2007)

An orphan may have no parents due to any combination of the following six reasons: death, disappearance, abandonment, desertion, separation or loss. For example, if one parent disappeared and the second parent was legally separated from the child, the child may qualify as an orphan. A parent-child relationship is terminated by any one of these conditions: a child "separated" from a parent, for example, does not also have to have been "abandoned" by that parent.

(1) Death of child's parent(s).

(a) A child whose natural parents are deceased and who has not acquired another parent (such as a stepparent or legal adoptive parent) under the INA is considered an orphan. For example, a legitimate child's natural parents who were just killed in an accident could be considered an orphan (assuming other criteria met). That child would continue to qualify as an orphan even after a court named her grandmother as her guardian, as long as the child was not legally adopted.

(b) Primary evidence that the biological parent has died is a death certificate in the name of the parent.

(2) Disappearance of child's parent(s).

(a) "Disappearance" means that the parent(s) has unaccountably or inexplicably passed out of the child's life; his or her or their whereabouts are unknown; there is no reasonable hope of reappearance, and there has been a reasonable effort to locate them as determined by a competent authority in accordance with the laws of the foreign-sending country.

(b) Primary evidence of disappearance consists of a decree from a court or other competent authority making the child a ward of the state by virtue of such disappearance and unconditionally divesting the parent(s) of all parental rights over the child.

(3) Abandonment by the child's parent(s).

(a) "Abandonment" means that the parents have willfully forsaken all parental rights, obligations, and claims to the child, as well as all control over and possession of the child, without intending to transfer, or without transferring, these rights to any specific person(s). Abandonment must include

not only the intention to surrender all parental rights, obligations, and claims to the child, and control over and possession of the child, but also the actual act of surrendering such rights, obligations, claims, control, and possession. A child who is placed temporarily in an orphanage should not be considered to be abandoned if the parents express an intention to retrieve the child, are contributing or attempting to contribute to the support of the child, or otherwise exhibit ongoing parental interest in the child.

(b) A relinquishment or release by the parent(s) to the prospective adoptive parents or for a specific adoption does not constitute "abandonment." Similarly, the relinquishment or release of the child by the parent to a third party for custodial care in anticipation of, or preparation for, adoption does not constitute "abandonment" unless the third party (such as a governmental agency, a court of competent jurisdiction, an adoption agency, or an orphanage) is authorized under the child welfare laws of the foreign-sending country to act in such a capacity. A child released to a government-authorized third party, however, could be considered to have been abandoned even if the parent(s) knew at the time that the child would probably be adopted by a specific person or persons, so long as the relinquishment was not contingent upon adoption by a specific person or persons.

(c) Primary evidence of abandonment is a document signed by the parent(s) unconditionally releasing the child to an orphanage, or a decree from a court or other competent authority making the child a ward of the state and unconditionally divesting the parent(s) of all parental rights over the child.

(4) Desertion by the child's parent(s).

(a) "Desertion" means that the parent(s) has willfully forsaken the child and has refused to carry out normal parental rights and obligations and that, as a result, the child has become a ward of a competent authority in accordance with the laws of the foreign-sending country. Desertion does not mean that the parent(s) has disappeared, but rather that he and/or she refuses to carry out his or her parent rights and obligations towards the child. Desertion differs from abandonment in that the parent(s) has not taken steps to divest him or herself of parental duties, but that parent's inaction has caused a local authority to step in and assume custody of the child.

(b) Primary evidence of desertion consists of a decree from a court or other competent authority making the child a ward of the state by virtue of such desertion and unconditionally divesting the parents of all parental rights over the child.

(5) Separation from the child's parent(s).

(a) "Separation" means the involuntary severance of the child from his or her parent(s) by action of a competent authority for good cause and in accordance with the laws of the foreign-sending country. This is often called "termination" of parental rights and often occurs because of child abuse or neglect, or because a competent authority deems the parent to be "unfit." The parent(s) must have been properly notified and granted the opportunity to contest such action. The termination of all parental rights and obligations must be permanent and unconditional.

(b) Primary evidence of separation consists of a decree from a court or other competent authority making the child a ward of the state by virtue of such separation and unconditionally divesting the parent(s) of all parental rights over the child.

(6) Loss from the child's parent(s).

(a) "Loss" means the involuntary severance or detachment of the child from the parents in a permanent manner such as that caused by a natural disaster, civil unrest, or other calamitous event beyond the control of the parents, as verified by a competent authority in accordance with the laws of the foreign sending country.

(b) Primary evidence of loss consists of a decree from a court or other competent authority (such as an empowered international organization) making the child a ward of the state by virtue of such loss and unconditionally divesting the parent(s) of all parental rights over the child.

9 FAM 42.21 N13.2-6 Orphan with Sole or Surviving Parent

(CT:VISA-878; 04-25-2007)

If a child is not an orphan by nature of having no parents, he or she may still be considered an orphan if the child has a sole or surviving parent who is unable to provide proper care and who has irrevocably released the child for emigration and adoption. This is the only circumstance where a child released directly to the adoptive parent(s) can qualify as an orphan.

(1) Sole or surviving parent.

(a) A "surviving" parent is defined as a child's living parent when the child's other parent is dead, and the child has not acquired another parent (i.e., a stepparent per definition in INA 101(b)(2)). Primary evidence would be a death certificate in the name of the deceased parent.

(b) A "sole" parent is one who is the mother of the child and whose situation meets all of the following criteria:

(1) The child was born out of wedlock (regardless of whether or not local law deems all children to be legitimate at birth);

(2) The child has not been legitimated under the law of the child's residence or domicile or under the law of the natural father's residence or domicile while the child was in the legal custody of the legitimating parent or parents;

(3) The child has not acquired a stepparent; and

(4) The natural father of the child is unknown, or has disappeared or abandoned or deserted the child, or has in writing irrevocably released the child for emigration and adoption.

(c) Evidence of "sole" parent status would be the birth certificate of the child or other proof of out-of-wedlock status, and documentation per 9 FAM 42.21 N13.2-5 or 9 FAM 42.21 N13.2-6 c on the whereabouts or status of the natural father.

(d) Note that under current DHS regulations, a father may not be considered to be a child's "sole" parent, and therefore could only release a child for emigration and adoption if he is a "surviving" parent.

(2) "Incapable of providing proper care" means that a sole or surviving parent is unable to provide for the child's basic needs, consistent with the local standards of the foreign sending country. A parent could be unable to provide proper care due to a number of reasons, including extreme poverty, mental or emotional difficulties, or long-term incarceration.

(3) The sole or surviving parent's irrevocable release for emigration and adoption must be in writing, in a language that the parent is capable of reading and signed by the parent. The release must be irrevocable and without stipulations or conditions which would cause custody of the child to revert to the birth parent. The release may, however, identify the person(s) to whom the parent is releasing the child, even if that person is the prospective adoptive parent. If the parent is illiterate, but in an interview satisfies the you that he or she had full knowledge of the contents of the

document and understood the irrevocable nature of the release, the officer may also treat the document as evidence of the release required for the orphan classification.

(4) There is no requirement that the irrevocable release be completed in the presence of a consular officer or notary, and in most cases the natural parent's presence should not be required to process an orphan case. However, when post has serious concerns with a particular case regarding the natural parent's intent or understanding of the release, you may request an interview of the natural parent. If there are concerns that purported natural parents may not be the biological parents of the child, DNA tests may be used to affirm that the true natural parent is releasing the child for emigration and adoption.

9 FAM 42.21 N13.2-7 Bona Fide Parent-Child Relationship, Severing of Previous Relationship

(CT:VISA-878; 04-25-2007)

a. Petitioners seeking to bring an orphan to the U.S. must intend to enter into a bona fide parent-child relationship with that orphan. A bona fide parent-child relationship implies the provision of care, support and direction to the orphan, without the intent to profit financially or otherwise from the presence of the child.

b. An adoption is intended to sever previous parental ties. Therefore, a caretaker relationship in which the adopting parents intend to return the child to their natural parents or former guardians in the future would generally not constitute a bona fide parent-child relationship. Also, as provided in INA 101(b)(1)(F), no natural parent or prior adoptive parent of an orphan may obtain any immigration benefit as a result of their relationship with an orphan.

9 FAM 42.21 N13.2-8 Child Buying, Fraud, Misrepresentation

(CT:VISA-878; 04-25-2007)

a. Orphan classification is not appropriate for cases involving clear and documented evidence (or an admission) of child-buying, fraud or misrepresentation.

b. Child buying.

(1) A child should not be considered an orphan if the adoptive parent(s), or a person or entity working on their behalf, have given or will give money or other consideration either directly or indirectly

to the child's natural parent(s), agent or other individual as payment for the child or as an inducement to release the child. You must seriously review allegations of child buying, and carefully weigh the evidence available to substantiate such charges.

(2) However, the prohibition on payments does not preclude reasonable payment for necessary activities such as administrative, court, legal, translation or medical services related to the adoption proceedings. Foreign adoption services are sometimes expensive and their costs can often seem disproportionately high in comparison with other social services. Further, in many countries there is a network of adoption facilitators, each playing a role in processing an individual case and thus reasonably expecting to be paid for their services. In most adoption cases the expenses incurred can be explained in terms of "reasonable payments." Even cash given directly to a biological mother may be justifiable if it relates directly to expenses such as pre-natal or neo-natal care, transportation, lodging or living expenses. Investigations of child buying, therefore, should focus on concrete evidence or an admission of guilt.

c. Fraud or misrepresentation.

(1) A child should not be considered an orphan if there is evidence of fraud or misrepresentation with the purpose of using deception to obtain visas for children who do not qualify. In many cases, both the U.S. citizen adoptive parents and adoptive children may be unwitting victims of a fraud which was actually perpetrated upon them by unscrupulous agents misrepresenting important facts about these children. If the fraud involves stolen or kidnapped children, biological parents may also be victims. In some cases, biological parents may also have been misled about the permanent nature of their separation from the child.

(2) You must carefully scrutinize documentation presented in support of orphan cases. In some cases, it may be necessary to conduct field investigations, DNA tests, or additional interviews in order to investigate possible adoption fraud. Because adoption cases are multi-faceted, a successful anti-fraud program should engage the entire adoption community, including agents, lawyers, orphanages, foster care providers, medical personnel, judges, local officials, and law enforcement personnel.

(3) You should keep in mind, however, that the responsibility for enforcing local laws and for protecting the rights of children and biological parents rests primarily with local authorities. Also, anti-fraud efforts must be balanced with the mandate to provide service to U.S. citizens and the need to be sensitive to the victims of fraud.

Whenever possible, posts should use anti-fraud techniques which do not unnecessarily delay processing or create further hardship for fraud victims.

9 FAM 42.21 N13.2-9 Immediate Relative (IR3 vs. IR4) Classifications and the Child Citizenship Act

(CT:VISA-878; 04-25-2007)

a. Orphans may be classified as either IR3 or IR4. The correct classification of immigrant visas issued to orphans is particularly important due to the passage of the Child Citizenship Act of 2000 (Public Law 106-395). As a result of that Act, orphans properly admitted to the United States based on the IR3 classification while under the age of 18 will automatically acquire U.S. citizenship, while those admitted as a result of an IR4 classification will not immediately acquire citizenship (see 9 FAM 42.21 N13.2-9 (e) and (f) for additional details). You should take particular care to classify orphan petitions and visas correctly and to inform prospective parents of the significance of the immigrant visa classification their child receives. (See also 9 FAM 42.21 N11 (d) on adopted children who should be issued other types of visas, and 9 FAM 42.21 N13.2-9 (g) on treatment of other adopted children under the Child Citizenship Act of 2000.)

b. Although proper classifications should be noted on Form I-600, Petition to Classify Orphan as an Immediate Relative or petition approval notices, the final determination of proper classification for the visa rests with the adjudicating consular officer. Travel plans and circumstances change, such that parents expecting to apply for an IR3 visa for their adopted child may not be able to complete the adoption abroad and/or may not have both seen the child. If the child cannot be classified as an IR3, you may approve the case based IR4 classification if the IR4 criteria noted below have been met.

c. The IR3 classification is appropriate for orphans who meet the following criteria:

   (1) The orphan was the subject of a full, final and legal adoption abroad by the petitioner (or spouse, if married) prior to visa issuance; and

   (2) The petitioner (and spouse, if married) physically saw the child prior to or during the foreign adoption process.

d. The IR4 classification is appropriate for orphans who meet the following criteria:

   (1) The orphan will be adopted by the petitioner (or spouse, if applicable) after being admitted to the United States (requires both petitioner intent and satisfaction of any applicable pre-adoption

requirements of the home state); and

(2) The petitioner (or someone working on his and/or her behalf) must have secured custody of the orphan under the laws of the foreign sending country sufficient to allow the child to be taken from the foreign sending country and adopted elsewhere.

e. Upon being legally admitted into the United States, and assuming the IR3 classification was appropriate and the child is under the age of 18, the child will automatically acquire U.S. citizenship as of the date of admission to the United States. The USCIS Buffalo office processes newly entering IR3 visa packets, automatically sending Certificates of Citizenship to eligible children without requiring additional forms or fees. Adoptive parents may also request a U.S. passport for the child.

f. IR4 visa recipients become Legal Permanent Residents (LPR) upon admission to the United States, but do not automatically acquire U.S. citizenship. A child who enters the United States on an IR4 visa acquires U.S. citizenship as of the date of a full and final adoption decree in the United States (assuming the child is under age 18 at the time of adoption). While citizenship is acquired as of the date of the adoption in such cases, beneficiaries will need to file Form N-600, Application for Certificate of Citizenship and submit it to the local USCIS District Office or Sub-Office that holds jurisdiction over their permanent residence to receive a Certificate of Citizenship. Alternatively, adoptive parents may request U.S. passports for the child as evidence of citizenship.

g. Many adoptive parents have questions related to the Child Citizenship Act. They can be referred to the USCIS Web site or State Web site for additional information and important details on the legislation's impact on adopted children. U.S. citizen parents of children adopted overseas who reside overseas and do not intend to reside in the U.S. may apply for naturalization on behalf of the child by filing Form N-600-K, Application for Citizenship and Issuance of Certificate under Section 322 at any USCIS District Office or Sub-Office in the United States. The naturalization process for such a child cannot take place overseas. The child will need to be in the United States temporarily to complete naturalization processing and take the oath of allegiance, you may therefore receive applications for B-2 nonimmigrant visas (NIVs) to attend Section 322 naturalization hearings (see 9 FAM 41.31 N14.5). You are encouraged to give positive consideration to such cases whenever possible, and should not force or encourage such parents and children to undergo the immigrant visa process if they do not intend to reside in the United States

9 FAM 42.21 N13.3 Adoptive Parent(s)' Suitability

and Ability to Provide a Proper Home Environment (Form I-600-A, Application for Advance Processing of Orphan Petition)

(CT:VISA-878; 04-25-2007)

The Department of Homeland Security's Citizenship and Immigration Services has responsibility for determining that adopting parents are suitable and able to provide a proper home environment for adopted children. You may assist in this process by providing information or necessary forms to prospective petitioners, or taking fingerprints or forwarding paperwork on behalf of such individuals under certain limited circumstances. You will also need to refer to USCIS suitability approvals in order to adjudicate orphan petitions or visa applications (see 9 FAM 42.21 N13.3-4).

9 FAM 42.21 N13.3-1 Purpose of the Form I-600-A, Application for Advance Processing of Orphan Petition

(CT:VISA-878; 04-25-2007)

a. INA 101(b)(1)(F) requires that USCIS be satisfied that proper care will be furnished to a child if admitted to the United States as an "orphan."

b. Form I-600-A allows the adopting parent(s) to demonstrate that they are financially, logistically and otherwise prepared to adopt a child internationally. Form I-600-A is not designed to evaluate a particular child's classification as an orphan. Because Form I-600-A reviews suitability, rather than a specific beneficiary's orphan status, a single Form I-600-A may result in approval for parents to adopt multiple children. Adopting parents are often encouraged to begin the overseas adoption process early by filing Form I-600-A before identifying a particular child to adopt.

c. You will sometimes adjudicate visas for orphan cases where the suitability/ability to provide proper home decision has been made based on an Form I-600 filed with a USCIS office – such cases are discussed in 9 FAM 42.21 N13.3-6.

9 FAM 42.21 N13.3-2 Filing the Form I-600-A, Application for Advance Processing of Orphan Petition

(CT:VISA-878; 04-25-2007)

a. The U.S. citizen prospective adoptive parent files the Form I-600-A with the U.S. Citizenship and Immigration Services (USCIS) office having jurisdiction over his or her place of residence. For U.S. citizens currently residing overseas, Form I-600-A may be filed with either the USCIS

regional office having jurisdiction over their proposed place of residence in the United States or with the USCIS office overseas having jurisdiction over their current place of residence.

b. You may not adjudicate an Form I-600-A. However, with the concurrence of the regional USCIS office having jurisdiction over the consular district, you may accept a completed Form I-600-A and fees from a U.S. citizen resident of the consular district for transmittal to the regional USCIS office. In such a case, the U.S. citizen should be advised to communicate directly with the regional USCIS office regarding requirements and status of the adjudication of the Form I-600-A.

c. Form I-600-A is available on USCIS's Web site. Form I-600-A must be signed by the petitioner and their spouse (if the petitioner is married). The application must be submitted with the following documentation:

   (1) Proof of U.S. citizenship of the adoptive parent;

   (2) Proof of marriage of petitioner and spouse (if married);

   (3) Home study (see 9 FAM 42.21 N13.3-2 d);

   (4) Proof of compliance with state pre-adoption requirements; and

   (5) Fees.

d. The home study is used to evaluate prospective parent(s)' financial ability to rear and educate the child, describe the living accommodations where the prospective parent(s) resides and where the child will reside, and to provide a factual evaluation of the physical, mental and moral capabilities of the prospective parent(s) to rear and educate the child. The home study must include a statement recommending or approving the parents for adoption.

   (1) 8 CFR 204.3(e) provides specific guidance on who can perform home studies and provide the statement recommending or approving adoption. Generally, any individual or agency may do the actual home study and interview, but the statement can only be made by an official of the state agency or by an agency licensed in the particular state where the child will reside.

   (2) The home study must contain specific approval of the prospective adoptive parents for adoption. The preparer of the home study is required to note the number of orphans which the prospective adoptive parents may adopt, as well as whether there are any specific restrictions to the adoption such as nationality, age or gender of the orphan. If the home study preparer has approved the prospective parents for a handicapped or special needs adoption, this fact must also be clearly stated.

e. As part of Form I-600-A suitability application, the petitioner, their spouse

(if married), and each additional adult member of the prospective adoptive parent(s)' household must be fingerprinted.

(1) For petitioners residing in the United States Form I-600-A is filed and then USCIS notifies each person in writing of the time and location where they must go to be fingerprinted (usually done electronically.) Any required updates for these individuals (see 9 FAM 42.21 N13.3-4) would be handled at the same location.

(2) For petitioners residing overseas, USCIS officers, or in countries without a USCIS presence, you will need to complete fingerprint cards Form FD-258, Applicant Fingerprint Card and collect fingerprinting fees for each individual. Any required updates for these individuals (see 9 FAM 42.21 N13.3-4) should be handled by either the USCIS officer at post, or in countries without a USCIS presence, by sending a new Form FD-258 by courier to the appropriate officer in CA/VO/F/P (see paragraph (3) below).

(3) For petitioners whose 15-month fingerprint clearances have expired and who appear in person at posts overseas with invalid fingerprint clearances, CA/VO/F/P can assist with expediting fingerprint clearances. Post should send a completed Form FD-258 by courier to the appropriate officer in VO/F/P. An e-mail response to the clearance request will be forwarded back to post from the Federal Bureau of Investigation (FBI) via CA/VO/F/P. If the FBI record shows no adverse information, you can attach the CA/VO/F/P response to the visas thirty-seven cable or approved Form I-600-A (see 9 FAM 42.21 N13.3-3) and process the case to conclusion. Should the FBI response contain an IDENT record, then post must stop processing the case and immediately forward Form I-600-A to the originating USCIS office.

9 FAM 42.21 N13.3-3 Approval of Form I-600-A, Applicaton for Advance Processing of Orphan Petition

(CT:VISA-878; 04-25-2007)

a. USCIS approval of Form I-600-A will be noted on the original Form I-600-A, as well as in an Form I-171-H, Notice of Favorable Determination Concerning Application For Advance Processing of Orphan Petition or Form I-797-C, Notice of Action Notice of Receipt sent to the petitioner and a visas 37 cable sent to the IV-issuing post with jurisdiction over any country where the petitioner intends to file an Form I-600 for the particular adopted child (if a country is indicated). You may not accept Form I-171-H/I-797-C as proof of Form I-600-A approval, but may accept the original approved Form I-600-A, a visas 37 cable, or faxed or e-mail notice of an approved Form I-600-A if transmitted directly from USCIS or

the Department. Upon request by the adopting parents, posts may transfer Form I-600-A approval notices to other immigrant visa-issuing posts by cable, fax or e-mail. Information on approval of home study updates or updated fingerprint clearances will be provided by USCIS or the Department by cable, fax or e-mail. Posts should not require applicants to present home studies, background information or the original Form I-600-A in order to process orphan cases.

b. Because USCIS adjudicators consider other factors besides the home study in reviewing Form I-600-A applications, Form I-600-A approval notice may show different criteria for the children who may be adopted than those listed in the home study originally prepared on the parents. In such cases it is Form I-600-A approval criteria which govern. If no criteria are listed, and if no pre-adoption requirements are noted, you should assume that there are no age- or gender-related restrictions on which children may be adopted, and that no pre-adoption requirements exist. If Form I-600-A approval notice does not specifically mention approval to adopt a special needs or disabled child, you should assume that parents were not approved for such an adoption. If posts encounter cases where two different approval notices for the same case provide differing information (for example, the physical Form I-600-A with its approval stamp doesn't note restrictions on the age or gender of the adopted child, but the visas 37 cable does), contact CA/VO/F/P for assistance.

c. Form I-600-A approval is valid for 18 months from the date of its approval, and adoptive parents filing a petition for a child to be classified as an orphan must file Form I-600 within the 18-month validity period. If Form I-600 isn't filed within that period, Form I-600-A is considered to have been abandoned. You may not extend the validity of Form I-600-A approval. If the prospective parent(s) wishes to file an orphan petition after their Form I-600-A expires, they must file a new Form I-600-A and submit required documentation to the appropriate USCIS office (or include additional information with the Form I-600 filed with a USCIS office, see 9 FAM 42.21 N13.3-6). Further action on the case must be put on hold until the new Form I-600-A is approved.

d. Separately, the fingerprint clearance obtained during the Form I-600-A process has a 15-month validity period. Dates of fingerprint clearances should be provided in the Form I-600-A approval documentation (if they are not, request assistance from CA/VO/F/P.) If an orphan petition is not approved within the 15-month clearance period, adoptive parents must request updated fingerprint clearance per procedures outlined in 9 FAM 42.21 N13.3-2 e. You may not extend the validity of the fingerprint clearance, and must wait for updated clearance information, either by notice from the appropriate USCIS office or by e-mail from CA/VO/F/P.

e. Adopting parents are urged to contact USCIS if there are major changes in their circumstances subsequent to the Form I-600-A approval. Such changes include significant changes in the petitioner's household (birth of a child, divorce of the petitioner, etc.), a change in jurisdiction (petitioner moves across state or country border, etc.), or a change in financial circumstances (petitioner loses his or her job, etc.). USCIS will generally then request an updated home study if necessary, and send notice of an updated Form I-600-A approval. You have no authority to review updated home studies. If you learn of changes in the petitioner(s)' circumstance and the petitioner has not requested and obtained an updated Form I-600-A approval, then you should consult with the original approving BCIS office regarding the case (see also 9 FAM 42.21 N13.3-5 on fraud or misrepresentation issues with the Form I-600-A).

9 FAM 42.21 N13.3-4 Consular Officer use of Form I-600-A, Application for Advance Processing of Orphan Petition Information

(CT:VISA-878; 04-25-2007)

Since suitability issues are solely the responsibility of USCIS, you are not involved in Form I-600-A adjudication and have no authority to review USCIS' determinations regarding adoptive parent(s)' suitability or ability to provide a proper home environment. However, you will need to review Form I-600-A approvals for the following:

(1) Form I-600 filing – as noted in 9 FAM 42.21 N13.4, you are only permitted to accept Form I-600 petitions if they have acceptable evidence of a valid Form I-600-A approval (and fingerprint clearance) for the petitioner(s).

(2) Form I-600 and visa adjudication – you may only approve Form I-600 petitions and/or visas for children who meet the conditions noted in the Form I-600-A approval. For example, if the Form I-600-A approval was only for one child under the age of two, or was made without noting special approval to adopt a special needs child, you could not approve an Form I-600 petition or visa for a 10-year old or a special needs child respectively. Similarly, if state pre-adoption requirements were identified and have not been met, you cannot approve the Form I-600 petition or visa for the child in question.

(3) Fraud concerns – you may encounter fraud in orphan cases, and information from the Form I-600-A may occasionally be used to corroborate requests for DHS review or revocation of orphan petitions. (See 9 FAM 42.21 N13.4-3 and 9 FAM 42.21 N13.6-2 provide additional information on dealing with such cases.)

9 FAM 42.21 N13.3-5 Fraud or Misrepresentation in the Form I-600-A, Application for Advance Processing of Orphan Petition

(CT:VISA-878; 04-25-2007)

In cases where you have a well-founded and substantive reason to believe that Form I-600-A approval was obtained on the basis of fraud or misrepresentation, or has knowledge of a change in material fact subsequent to the approval of Form I-600-A, you should consult with its regional USCIS office on disposition of the case.

9 FAM 42.21 N13.3-6 Using the Form I-600, Petition to Classify Orphan as an Immediate Relative to Demonstrate Suitability

(CT:VISA-878; 04-25-2007)

a. Adoptive parents who already know which child they intend to adopt and who intend to file their paperwork with a USCIS office in the United States may submit proof of their suitability to adopt (per guidelines in 9 FAM 42.21 N13.3-2) at the same time that they file Form I-600 petition for orphan classification for the child. In such cases, notice of USCIS approval of Form I-600 petition should be considered as approval of the parents' suitability to adopt.

b. Parents are not obligated to use the Form I-600 petition in such cases. Under current USCIS regulations, parents can choose to demonstrate their suitability to adopt overseas by filing the Form I-600-A "pre-clearance" application (and then subsequently filing Form I-600), or by filing the Form I-600 alone. While filing both suitability- and classification-related documentation on an already identified child using Form I-600 alone may be more convenient for some adoptive parents, many prospective adoptive parents may find that doing so would unnecessarily delay or even prevent processing on their case. In particular, if the parents intend to file Form I-600 overseas, overseas USCIS officers and consular officers will be unable to accept Form I-600 petition unless Form I-600-A has already been approved. Also, for parents who have not yet identified their adoptive child, filing Form I-600-A application first will result in faster processing of an immigrant visa (IV) for their child once identified.

9 FAM 42.21 N13.4 The Orphan Petition (Form I-600, Petition to Classify Orphan as an Immediate Relative)

9 FAM 42.21 N13.4-1 Purpose of the Form I-600, Petition to Classify Orphan as an Immediate Relative

(CT:VISA-878; 04-25-2007)

Form I-600 is used to document a particular child's classification as an orphan under INA 101(b)(1)(F). Separate Form I-600 must be filed for each child, even though the associated Form I-600-A approval may have been for multiple children. An orphan can only be issued an immigrant visa (IV) if he or she is the beneficiary of an approved Form I-600.

9 FAM 42.21 N13.4-2 Filing the Form I-600, Petition to Classify Orphan as an Immediate Relative

(CT:VISA-878; 04-25-2007)

a. Prospective adoptive parents may file Form I-600 on behalf of the adoptive child with the USCIS office having jurisdiction over their place of residence, or with a USCIS or consular officer overseas, per the guidelines noted below:

(1) Prospective adoptive parents residing in the United States should file Form I-600 with the USCIS District or Sub-Office with jurisdiction over their place of residence. Adoptive parents involved in proxy adoptions (see 9 FAM 42.21 N13.2-3 (c)) will need to file petition in this way;

(2) Prospective adoptive parents currently residing overseas should file Form I-600 petitions with the USCIS office in that country, or, in countries without a USCIS presence, with consular officers covering that consular district;

NOTE: However, per 9 FAM 42.21 N13.1 (b) adoptive parents who intend to continue residing overseas should generally not be pursuing IV processing for the child.

(3) Petitioners not resident in the consular district should verify local USCIS or consular offices practices regarding Form I-600 filing overseas. In general, both USCIS and consular officers may at their discretion accept Form I-600 from a physically-present non-resident petitioner in humanitarian or emergent circumstances if an Form I-600-A has already been approved for the petitioners. For consular officers, it is anticipated that petitions for orphan cases should generally be considered humanitarian cases, and therefore accepted (see 9 FAM 42.41 N4.2-5); and

(4) Prospective adoptive parents adopting children who will soon turn 16 may wish to file Form I-600 petitions on behalf of the children with USCIS offices in the United States or overseas, since USCIS

will accept and consider as properly filed Form I-600 without all of the documents listed in 9 FAM 42.21 N13.4-2 (d) (although the documents will ultimately be required for petition approval.) You, however, should not accept (or consider to have been properly filed) petitions submitted without all required documentation as listed in 9 FAM 42.41 N13.4-2 (b)(1)).

b. You may only accept Form I-600 (permit them to be filed) under the following circumstances:

(1) Post has notice of Form I-600-A approval and both the approval and fingerprint clearances are still valid (see 9 FAM 42.21 N13.3-3 (c) and (d));

(2) There is no USCIS petition-adjudicating office in-country;

(3) The U.S. citizen petitioner does not already have Form I-600 pending for the same beneficiary; and

(4) The U.S. citizen petitioner is physically present before you, presents required documents and fees, and swears to (or affirms) the truth of the information presented (see 9 FAM 42.21 N13.4-2 c):

(a) Oath: You must administer an oath (or affirmation) to the U.S. citizen petitioner, asking them to swear (or affirm) that all of the information presented is true and correct to the best of their belief and knowledge.

(b) Completing and signing the petition: You must ensure that the Form I-600 has been completely filled out, and signed by the petitioner (and spouse, if applicable) after having been completed. A third party may not sign or file the petition on behalf of the petitioner and/or spouse, even with a power of attorney. Because the petitioner must be physically present before you, petitions may not be submitted to you by mail or other indirect means.

(c) Spouses: If the petitioner is married, his or her spouse must sign the petition, although he or she does not have to sign before you. In the event that only one spouse travels abroad to file Form I-600 at post, you should verify that the non-traveling spouse did not sign the petition before all of the information relating to the child had been entered onto the form. If Form I-600-A has been approved for a married couple, either spouse may sign Form I-600 as the "prospective petitioner" with the other signing as the "spouse" (unless the married couple consists of one U.S. citizen and one alien, in which case the U.S. citizen must be the "prospective petitioner" on both documents.)

(d) Fees: A prospective adoptive parent who filed Form I-600-A with USCIS may file Form I-600 for one child without any additional fee. If more than one Form I-600 is being filed based on Form I-600-A, the petitioner must pay Form I-600 filing fee for each child beyond the first unless the children involved are siblings (in which case no additional fees would be collected.)

(e) Documents: The petitioner must present the following documents with Form I-600 in order for the petition to be considered to have been properly filed:

(1) Child's original birth certificate, or if such certificate is not available, a written explanation together with secondary evidence of identity and age (example: a re-issued birth certificate showing adoptive parents);

(2) Evidence that the child either has no parents or a sole/surviving parent unable to provide proper care who has irrevocably released the child for emigration and adoption, per guidelines in 9 FAM 42.21 N13.2-5 or 9 FAM 42.21 N13.2-6; and

(3) Evidence of adoption or intent to adopt, per guidelines in 9 FAM 42.21 N13.2-3.

(f) Any foreign language documents submitted with the Form I-600 petition must be accompanied by a full English translation, which the translator has certified as complete and correct, and by the translator's certification that he or she is competent to translate the foreign language into English.

(g) For Form I-600 filed with consular officers, originals of required documents must be submitted for review with Form I-600. You should make copies of relevant documents for the immigrant visa (IV) packet, noting that originals were seen and returned in the case notes field in the Immigrant Visa Overseas system.

NOTE: USCIS permits petitioners to submit copies of some documents when accepting Form I-600; petitioners should be directed to the FormI-600 instructions for rules regarding copies of required documents when filing the petition with USCIS.

(h) 8 CFR 204.3 requires that documents used in the filing of an orphan petition must have been obtained in accordance with the laws of the foreign-sending country. A foreign-sending country is defined as the country of the orphan's citizenship, or, if he or she is not permanently residing in the country of

citizenship, the country of the orphan's habitual residence. This excludes a country to which the orphan travels temporarily, or to which he or she travels either as a prelude to or in conjunction with, his or her adoption and/or immigration to the United States.

c. You should be particularly sensitive to legal requirements that Form I-600 be filed before an orphan reaches the age of 16. Posts should ensure that prospective parents are aware of age-related concerns and, whenever possible and subject to the guidelines above, should provide a reasonable opportunity for parents to file Form I-600 and accompanying documentation prior to the child's 16th birthday.

9 FAM 42.21 N13.4-3 Consular Officer Adjudication of Form I-600, Petition to Classify Orphan as an Immediate Relative

(CT:VISA-878; 04-25-2007)

a. Once Form I-600 has been properly filed, you should review Form I-600 and accompanying documentation. Based on that review and completion of the Form I-604, Request for and Report on Overseas Orphan Investigation (see 9 FAM 42.21 N13.5), you will determine whether the child is eligible for immigrant classification as an orphan.

b. Consular officers have been given authority to approve Form I-600 that are found to be clearly approvable. Clearly approvable in this context means that:

(1) To your satisfaction Form I-600 and accompanying documentation, as well as the review of Form I-604 (see 9 FAM 42.21 N13.5), clearly establish that the child in question is an orphan according to INA 101(b)(1)(F) per criteria outlined in 9 FAM 42.21 N13.2;

(2) No unresolved issues of fraud, child buying or other inappropriate practices are associated with the case (see 9 FAM 42.21 N13.2-7 and 9 FAM 42.21 N13.2-8); and

(3) The child fits all criteria identified in the Form I-600-A approval (i.e., age, gender, special needs, etc., if any), and any state pre-adoption requirements have been met.

c. If you find Form I-600 clearly approvable, per 9 FAM Appendix N 202(a), you must document the approval in the top block on the first page of Form I-600. The approval annotation should include the "approved" notation, classification of the petition and section of law under which petition was approved (see 9 FAM 42.21 N13.2-9), petition filing date, petition approval date, and the signature and title (including post) of the approving officer.

d. If a petition does not appear to be "clearly approvable", you should give the petitioner the opportunity to respond to questions or issues that can be quickly or easily resolved. In cases involving Form I-600 or visa application where state pre-adoption requirements have not yet been met, prospective adoptive parents should be given the opportunity to demonstrate that they have satisfied any unmet requirements. If the problem with the case is that evidence presented varies from or contradicts that originally submitted with the petition, but does not contradict the fact that the child qualifies under INA 101(b)(1)(F), the case should be processed to conclusion. For example, a late registered birth certificate may be irregular, but if other evidence clearly shows that the child should be considered an orphan, the petition should be approved.

e. In some cases, further investigation may be merited due to doubts related to the documents (or absence of documents) presented, contradictory information, or indications of child-buying, fraud and other inappropriate practices. You should work with post's anti-fraud unit, regional security officer (RSO) and, if appropriate, local officials and contacts to further investigate if necessary. Investigation procedures vary from post to post, since the best means of collecting necessary information regarding the child's status and history often depend on local conditions. Some possible elements of an investigation could include interviews with the child (if of sufficient age), social workers, orphanage representatives, the prospective adopting parents or biological parent(s). When fraud is detected or indicated, a full field investigation may be warranted. Fraud investigations should be conducted as expeditiously as possible.

f. If further response from the petitioner or post investigation does not lead to a determination that the petition is clearly approvable, Form I-600 and accompanying documentation (including Form I-604) should be expeditiously forwarded to the regional USCIS office for adjudication (see 9 FAM Appendix N Exhibit I) with an explanation of the facts of the case and actions taken to try to resolve any outstanding issues. In addition, you should notify the petitioner in writing of this action, including a brief explanation of the decision and the name and address of the USCIS office to which the petition has been forwarded. You do not have the authority to deny an Form I-600 under any circumstances.

9 FAM 42.21 N13.4-4 Approval of Form I-600, Petition to Classify Orphan as an Immediate Relative

(CT:VISA-878; 04-25-2007)

a. Depending on where Form I-600 was filed and adjudicated, you will encounter various types of proof that Form I-600 was approved. Any of

the following should be considered sufficient evidence of Form I-600 approval:

(1) Original Form I-600 with approval notations from a USCIS or consular officer;

(2) Faxed or e-mail notification from USCIS or the Department of petition approval; or

(3) Visas 38 or 39 cable from USCIS (visas 38 indicates IR3 classification approval, visas 39 indicates IR4 classification approval)

b. You may not issue an IR3 or IR4 visa unless they have evidence of Form I-600 approval. As with other visa-related petitions, you should consider a USCIS or consular officer notice of petition approval as prima facie evidence of the child's entitlement to classification as an orphan.

9 FAM 42.21 N13.4-5 Orphan First Pilot Program

(CT:VISA-878; 04-25-2007)

a. In July 2003, USCIS created the "Adjudicate Orphan Status First" Pilot Program in order to explore means of addressing situations in which a parent completes an adoption or custody arrangement overseas and then discovers that the adopted child does not qualify for immigrant visa classification. Currently this pilot program is available only for children in Haiti, the Philippines, Honduras or Poland. Prospective adoptive parents intending to adopt a child from one of these countries may opt to have USCIS or State officers evaluate the child's ability to be classified as an orphan, prior to completion of the adoption or grant of custody.

b. For such cases, prospective parents filing Form I-600 submit all required documentation except the adoption decree or custody document, and, in addition, provide a written statement indicating that they want to participate in the Orphan First program and have not yet adopted the child or obtained custody of the child for purposes of adoption. As with any Form I-600, USCIS or State officers examine the documentation submitted and complete the Form I-604, Request for and Report on Overseas Orphan Investigation (see 9 FAM 42.21 N13.5). If the child otherwise appears to be an orphan, the adoptive parents are then informed that they may complete the adoption or custody arrangements. Upon provision of the final adoption decree or custody document, Form I-600 may then be approved. Subsequent processing follows normal case guidelines.

c. At Orphan First Pilot posts without USCIS representation (currently only Poland), you should immediately report to CA/VO/F/P on any case in which a prospective adoptive parent opts to participate in the program.

9 FAM 42.21 N13.5 Form I-604, Request for and Report on Overseas Orphan Investigation

9 FAM 42.21 N13.5-1 Purpose of Form I-604, Request for and Report on Overseas Orphan Investigation

(CT:VISA-878; 04-25-2007)

a. Form I-604 is primarily used to document consular officer or overseas USCIS officer determinations that a child should be properly classified as an orphan. The form was created as a checklist for officers to ensure that key criteria for the orphan classification have been reviewed, as elaborated in 9 FAM 42.21 N13.2-1. A copy of Form I-604 updated in 2006 is in 9 FAM 42.21 Exhibit I.

b. In rare cases, Form I-604 may also be used by domestic USCIS offices to request that posts conduct an inquiry or investigation into a case prior to USCIS adjudication of an orphan petition. In such cases, the USCIS office should provide posts with a copy of all pertinent documents in the case and a memorandum explaining the reason for requesting the inquiry.

9 FAM 42.21 N13.5-2 Responsibility for Form I-604, Request for and Report on Overseas Orphan Investigation Review

(CT:VISA-878; 04-25-2007)

a. Form I-604 Determination Worksheet must be completed for all orphan cases. Responsibility for completion of the Form I-604 varies depending on how the Form I-600 is filed:

   (1) If Form I-600 is filed and approved in the United States, Form I-604 should be completed by you prior to approval of the visa application.

   (2) If Form I-600 is filed overseas in a country with a USCIS presence, USCIS officers should complete Form I-604 prior to petition approval.

   (3) If Form I-600 is filed overseas in a country with no USCIS presence, Form I-604 is completed by you prior to petition approval.

   (4) When used by USCIS offices to request that posts verify orphan status of an individual prior to domestic adjudication of the orphan petition, Form I-604 should be completed by USCIS officers if there is a USCIS presence in-country, or by you in a country with no USCIS presence.

b. In its current form, Form I-604 is designed as an internal worksheet to

ensure proper processing of orphan cases. The form is not available to the public on the USCIS Web site, and adopting parents and other entities should not be requested to directly assist in completion of the form.

9 FAM 42.21 N13.5-3 Completion and Disposition of Form I-604, Request for and Report on Overseas Orphan Investigation

(CT:VISA-878; 04-25-2007)

a. Consular officers completing Form I-604 based on Form I-600 approved in the United States or on Form I-600 filed overseas (see 9 FAM 42.21 N13.5-2a(1) and (3)) should complete all sections of Form I-604 except question 2. The completed Form I-604 should then be attached to Form I-600, and remain with the petition regardless of the outcome of the case.

b. Consular officers completing Form I-604 based on the request for an inquiry by a domestic USCIS office prior to their adjudication of the petition (see 9 FAM 42.21 N13.5-2a(4)) should complete items 1 and 5 through 15 of Form I-604, as applicable. If any item does not apply at the time of the inquiry, you should note in block 15 why it is inapplicable. You should sign and date, page 4, under "Officer Performing Inquiry." The completed Form I-604 should be returned with any relevant documentary evidence directly to the requesting USCIS office.

c. Approval of Form I-600 or orphan visa requires a favorable Form I-604 determination that the child should be properly classified as an orphan. Negative responses on most worksheet items clearly indicate cases in which the orphan classification is not appropriate. In such cases you should follow guidance in 9 FAM 42.21 N13.4-3(d)-(f) and 9 FAM 42.21 N13.6-2(b), and 9 FAM 42.43 N1-3 for returning petitions to USCIS and not clearly approvable or for possible revocation.

d. Completion of Form I-604 should not be the basis for delays in processing cases. Form I-604 from itself does not trigger a requirement that investigations or field visits be done on each case, although it provides a mechanism for documenting any such reviews deemed necessary by the adjudicating officer to address potential classification of fraud issues.

9 FAM 42.21 N13.6 Orphan Visa Applications

9 FAM 42.21 N13.6-1 Submitting Orphan Immigrant Visa Applications

(CT:VISA-878; 04-25-2007)

a. Immigrant visa (IV) applications on behalf of orphans may be submitted

to IV-issuing posts once Form I-600 has been approved and post has received notification of such approval per 9 FAM 42.21 N13.4-4. Whenever possible, petitioners should be permitted to file visa applications for orphans the same day that Form I-600 are filed at post. However, in such cases orphan visa applications should only be accepted once Form I-600 is approved. Also, parents should be given realistic expectations as to when the visa will be available if approved (same-day issuance is not the norm).

b. Orphan IV applications should include Form DS-230, Application for Immigrant Visa and Alien Registration (with part II signed in the presence of a consular officer by the adopting parent or individual with custody of the child), evidence of orphan classification (see 9 FAM 42.21 N13.2), and all standard IV supporting documentation, (see 9 FAM 42.65, 9 FAM 42.66 Notes, Procedural Notes and Medical Examination and 9 FAM 40.41 N3.2):

   (1) Birth certificate;

   (2) Passport or other appropriate travel document;

   (3) Photographs (three full frontal photographs);

   (4) Police, military or prison records, if required (rare);

   (5) Form I-864, Affidavit of Support under Section 213A of the Act or other financial support documents (see 9 FAM 42.21 N13.6-3 (c)); and

   (6) Medical exams (see 9 FAM 42.21 N13.6-3 b).

c. You must also ensure that the IV processing fee has been collected prior to adjudicating the visa application. Some fees will be collected by National Visa Center (NVC), but many will be paid at post.

9 FAM 42.21 N13.6-2 Reviewing Documentation and Classification

(CT:VISA-878; 04-25-2007)

a. When reviewing orphan visa applications you must confirm that the applicant may be considered an "orphan." Approval of Form I-600 should be considered prima facie evidence of orphan status, but you must briefly review Form I-600, completed Form I-604 and originals of documentation supporting orphan status to confirm that the classification is appropriate. This is particularly important in cases where Form I-600 was adjudicated in the United States, without the possible benefit of physically seeing the parties involved and having more in-depth knowledge of the documents and fraud patterns in the local country.

b. If the petition appears to have been approved in error, or if you develop

substantive evidence of fraud or misrepresentation in Form I-600, then the petition should be returned to the approving office with a request for revocation, per instructions in 9 FAM 42.43 N1-3. However, if the evidence is at variance with that originally submitted with the petition, but does not contradict the fact that the child qualifies under INA 101(b)(1)(F), the case should be processed to conclusion.

9 FAM 42.21 N13.6-3 Reviewing Ineligibilities

(CT:VISA-878; 04-25-2007)

a. Orphan visa applicants are subject to all of the standard INA Section 212 ineligibilities, although in practice almost all adopted (or to-be-adopted) children will not be affected by criminal, security, immigration violation and other ineligibilities due to their age. The two areas where orphans are treated somewhat differently deal with medical issues (in particular, INA 212(a)(1)(A)(ii) as amended on vaccination requirements), and INA 212(a)(4) (public charge), both discussed below.

b. Medical issues: As with any other IV case, if a child is found to have a Class A medical condition, the child will be ineligible for a visa under INA 212(a)(1) until and/or unless that condition is waived or otherwise overcome. The two key medical issues that are treated somewhat differently with orphan cases are vaccinations and evidence of significant medical conditions revealed in the panel physician's medical exam.

(1) Vaccinations: IR3 and IR4 applicants are exempt from INA 212(a)(1)(A)(ii) vaccination requirements provided that the adoptive parent(s) signs an affidavit attesting that the child will receive the required vaccination within 30 days of the child's admission to the United States or at the earliest time that is medically appropriate. Proper affidavit forms are provided in 9 FAM 40.11 Exhibit II; once completed, it should be attached to the medical exam form and included in the IV packet. Only children whose adoptive parents have signed such an affidavit will be exempt from the vaccination requirement. In situations where the adopting parent(s) objects to the child receiving vaccinations on religious or moral grounds, the applicant will still require an individual INA 212(g)(2)(C) waiver from USCIS (see 9 FAM 40.11 N7.6).

(2) Significant medical conditions.

(a) You should ensure that adoptive parents understand that the orphan petition and visa application are not meant to provide comprehensive evaluations of an adoptive child's health. Parents should be encouraged to arrange private evaluations by qualified medical professionals, preferably ones versed in

childhood development if they have health-related concerns about the child. However, if a significant medical condition is revealed through the panel physician's medical exam, you must furnish the adoptive parents with available information concerning the affliction or disability. This is especially important in cases where the parents have not physically observed the child.

(b) If a serious medical condition is discovered, and in particular one which is a physical, mental or emotional condition that would affect the child's normal development, processing should be suspended until you receive a notarized statement from the adoptive parent, or parents if married, indicating awareness of the child's affliction and willingness to proceed with orphan processing. An abstract of a home investigation made by a social service agency, countersigned by the adoptive parent(s), is acceptable if it notes the parent(s) are aware of the child's condition and nevertheless willing to adopt the child. An appropriate entry in item 20 of the Form I-600 initialed by the adoptive parent(s) is also acceptable. If the adoptive parents choose not to pursue the petition, you should forward it, along with an explanation and all other pertinent information, to the appropriate USCIS overseas office.

(c) Note also that a child with a serious medical condition or disability may sometimes be considered a special needs child, and therefore subject to the requirement that the adoptive parents' Form I-600-A approval includes reference to parents' ability to adopt a special needs child. In cases where a child is later determined to be a special needs child and parents' suitability approvals do not note approval to adopt a special needs child, the petition and related documentation should be forwarded to the regional USCIS office overseas for possible revocation or reconsideration of suitability determinations. You should notify the prospective parents of the action.

c. Public charge: USCIS has determined that Form I-864, Affidavit of Support under Section 213A of the Act is not required for IR3 applicants who will automatically acquire U.S. citizenship upon admission to the United States as legal permanent residents (see 9 FAM 42.21 N13.2-9). However, IR4 applicants (as well as IR3 applicants not eligible for U.S. citizenship, e.g., those over age 18 at the time of admission, etc.) must have a properly completed and signed Form I-864 with all required supporting documents submitted on their behalf by the petitioner. In general, the adoptive parents' ability to care for a child is evaluated during Form I-600-A adjudication, such that an IR3 or IR4 applicant is

unlikely to become a public charge. Except where Form I-864 is required, the Form I-600-A serves as proof that the underlying requirements of INA 212(a)(4) have been met. Additional financial evidence should only be required if the child has an illness or defect not addressed by the approved Form I-600-A which would entail significant financial outlay or if other unusual circumstances prevail.

d. Waivers: Should you determine that an ineligibility exists for an orphan and that the petitioner wishes to apply for an available waiver of ineligibility, you should expedite submission of a waiver application to USCIS.

9 FAM 42.21 N13.6-4 Adjudication of the Visa Application, Issuance of the Visa

(CT:VISA-878; 04-25-2007)

a. If you confirm that the child may be classified as an orphan, that all required documentation to produce the immigrant visa have been submitted, and that no ineligibilities exist (or those that exist have been waived), you should approve the visa application. If the application cannot be approved, you must explain orally and in writing the reason for the refusal and any possible remedies available.

b. If the application is approved, the immigrant visa (IV) should be produced per standard IV procedures (see 9 FAM 42.72, 9 FAM 42.21, and 9 FAM 42.73). Form I-604 should be included as part of the IV package, immediately following Form I-600 in the packet. Particular care should be paid to ensuring proper classification of the visa as an IR3 or IR4 (see 9 FAM 42.21 N13.2-9).

c. See 9 FAM 42.72(a), IVs for orphans should generally be issued with a six-month validity period. However, a child legally adopted by a U.S. citizen and spouse while they are serving abroad in the U.S. armed forces, employed abroad by the U.S. Government, or temporarily abroad on business, may be issued an IV for a longer period (not to exceed three years) to accommodate adoptive parents' intended return to the United States upon completion of the military service, employment or business.

d. Upon receipt of the issued visa, adopting parents (or those traveling with the child) should be informed of Child Citizenship Act implications of the type of visa issued (see 9 FAM 42.21 N13.2-9) and refer to Department and USCIS Web sites for additional information.

9FAM 42.21 N14 CHILDREN ADOPTED FROM HAGUE CONVENTION COUNTRIES

(CT:VISA-878; 04-25-2007)

a. The United States has signed but not ratified the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (in this section, "Hague Convention"). Public Law 106-279, the Inter-country Adoption Act of 2000 (IAA), requires that implementing regulations be developed prior to ratification of the Convention. The United States is currently working on those regulations.

b. Until the United States ratifies the Hague Convention, adopted children in Hague signatory countries must demonstrate that they fit into either the 101(b)(1)(E) "child" or 101(b)(1)(F) "orphan" classification in order to obtain an immigrant visa (IV) based on the adoptive relationship (see 9 FAM 42.21 N12 and N13, respectively). No immigrant petitions or visas may be approved based on INA 101(b)(1)(G) Hague child status at this time.

9 FAM 42.21 N15 CLASSIFICATION OF AMERASIAN CHILDREN UNDER PUBLIC LAW 97-359

9 FAM 42.21 N15.1 Classification Under INA 204(f)(1)

(CT:VISA-878; 04-25-2007)

a. Public Law 97-359 of October 22, 1982, added section 204(g) (now 204(f)(2)) to the INA to provide preferential treatment in the immigration of certain illegitimate Amerasian children of U.S. citizen fathers who are unable to immigrate under any other section of the INA. Prior to enactment of Public Law 97-359, these children were unable to gain any benefits from their relationship to their father. The provisions of INA 204(f)(1) enable them to do so without requiring their father to file a petition on their behalf.

b. To qualify for benefits under INA 204(f)(1) the beneficiary must have been:

   (1) Born in Korea, Vietnam, Laos, Cambodia, or Thailand after December 31, 1950, and before October 22, 1982; and

   (2) Fathered by an U.S. citizen.

c. Beneficiaries under age 21 and unmarried are entitled to classification as immediate relatives; unmarried sons and daughters over the age of 21 to classification as family first preference; and married sons and daughters to family third preference.

9 FAM 42.21 N15.2 Alternative Classification

(CT:VISA-728; 04-07-2005)

An Amerasian child may, of course, immigrate under another provision of the INA, if so qualified. For example, an alien may be classified as an orphan under INA 101(b)(1)(F) (see 9 FAM 42.24) or may qualify as an Vietnamese Amerasian under Public Law 100-102, as amended by Public Law 101-167 and Public Law 101-513, for whom no petition is required.

9 FAM 42.21 N15.3 Petition Procedures for Amerasian Child

(CT:VISA-878; 04-25-2007)

You may not approve petitions for Amerasian children who are beneficiaries under Public Law 97-359. (See 8 CFR 204.4.)

9 FAM 42.21 N15.4 Revocation of Petition for Amerasian Child

(TL:VISA-170; 10-01-1997)

Department of Homeland Security (DHS) regulations for the revocation of petitions for Amerasian beneficiaries under Public Law 97-359 are provided in 8 CFR 205.1(a)(ii).